REMARKS

This application has been reviewed in light of the Office Action dated May 23, 2008. Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 are presented for examination, of which Claims 1, 55, and 65 are in independent form. Favorable reconsideration is requested.

Claims 1, 4, 6-9, 11, 13-22, 55, 56, 58, 59, 61-67, 69-83, 93, 94, and 98-101 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 7,155,157 (*Kaplan*). Claims 5, 12, 57, and 68 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kaplan* in view of Official Notice; and Claim 10 was rejected as being unpatentable over *Kaplan* in view of U.S. Patent 6,223,165 (*Lauffer*).

Kaplan has a filing date of September 20, 2001, and claims priority to provisional application no. 60/234,438, filed on September 21, 2000. Without conceding that Kaplan's provisional application discloses all relevant portions of his issued patent, Applicant notes that the priority date for the subject application predates the filing of both of Kaplan's applications. Specifically, the subject application claims priority to European Application No. 00120302.5, which was filed on September 15, 2000. Accompanying this Response is a sworn English translation of that priority document, a certified copy of which was submitted on July 25, 2001. While Applicant submits that the priority document supports the pending claims, in accordance with MPEP § 201.15, the Examiner is respectfully requested to confirm for herself that Applicant is entitled to his priority date, and upon such confirmation, to withdraw *Kaplan* as a reference against the subject application.

The Office Action does not assert that any of the other references cited against Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 renders them anticipated or unpatentable in the

absence of *Kaplan*. Therefore, Applicant submits that Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 are patentable and respectfully requests that the outstanding rejections under 35 U.S.C. §§ 102(e) and 103(a) be withdrawn.

In addition, Applicant respectfully traverses the taking of Official Notice relating to the state of the art of the Internet at the time of the invention. Official Notice was taken that "anonymous communication is old and well known in the art of the Internet." (Office Action, page 4). MPEP 2144.03 states, in part,

> "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. ...
>
> ...[A]ssertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also ... *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ('[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.')."

Applicant submits that the state of the art of the Internet at the time of the invention is an area of esoteric technology. Moreover, Applicant submits that an anonymous communication linked to an award system was not in the state of the art prior to the invention. Accordingly, should a rejection be entered or repeated based in whole or in part on the same Official Notice, Applicant respectfully requests that the Examiner produce a reference in support of the Officially Noticed statement.

In view of the foregoing remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100 or by facsimile at (212) 218-2200. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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